

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 356 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT CO-OPERATIVE

MARKETING FEDERATION LTD.

Versus

AMBALAL S KUMBHAR

Appearance:

MR GM JOSHI for Petitioner

MR DT SONI for Respondent No. 1, 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/02/98

ORAL JUDGEMENT

This petition is preferred against the judgment and award of the Labour Court, Ahmedabad passed in reference (L.C.A.) No.631/1984 on 28.6.91. The petitioner before this Court is the employer (herein after referred as 'the Society').

2. The respondents (hereinafter referred to as the

workmen) herein were serving under the Society in Class III service. One of the workmen i.e. Ambalal Kumbhar has secured a degree in Agriculture and was serving as Supervisor. Another workman Punjabhai Raval was serving as a clerk. In the month of February i.e. on 21.2.83 and 23.2.83, the said workmen Punjabhai and Ambalal respectively were transferred to Godhra. The workmen Punjabhai was relieved of his duties at Ahmedabad on 22.2.83 and Ambalal was relieved on 3.3.83. However, neither of the workmen reported for duty at Godhra and instead signed their presence in the muster roll at Ahmedabad. Under communication dated 22.3.83 and 5.4.1983, said Ambalal and Punjabhai respectively were suspended from service and were called upon to show cause why no disciplinary inquiry should be initiated against them for the alleged misconduct of not obeying orders of transfers made against them and for tampering with the muster roll. In view of the alleged misconduct committed by the workmen disciplinary proceedings were initiated against them. After completion of the disciplinary proceedings, the Inquiry Officer held that the imputations of charge made against the workmen were proved. The Inquiry Officer further held that the grounds stated by the workmen for not obeying the orders of transfer were not justifiable nor genuine. In view of the findings recorded by the Inquiry Officer, under communications dated 20.9.83 both the workmen were given an opportunity to report for duty at Godhra pursuant to the orders of transfers made in the month of February 1983. The said communications were sent to the workmen by registered post which they refused to accept. As a result of the disciplinary proceedings held against the workmen, both the workmen were dismissed from service by orders made on 27.10.83. Feeling aggrieved the workmen approached the Labour Court as aforesaid.

3. The Labour Court under its impugned judgement and award held disciplinary proceedings, conducted against the workmen, to be legal and valid. However, the court was of the opinion that the punishment imposed upon the workmen was not commensurate with the guilt established against them and was far excessive. The Court therefore, set aside the orders of dismissal made against the workmen and substituted the punishment, imposed upon them, by that of withholding of 2 increments with permanent effect to be given effect to after the reinstatement in service. The Court further proceeded to award full back wages with continuity in service. Feeling aggrieved, the Society has preferred this petition. By way of an interim arrangement ordered by the Supreme Court in Civil Appeal No.2842/92 preferred by

the society, the workmen have been reinstated in service on their original post (i.e. at Ahmedabad) and have been paid 25% of the back wages due and payable to them under the award of the Labour Court.

4. The learned advocate Mr. Joshi has appeared for the society and has submitted that the findings recorded by the Inquiry Officer have been upheld by the Labour Court and the Court has [also upheld the validity and legality of the disciplinary proceedings conducted by the society. He has submitted that the court having accepted the factum of the workmen's committing misconduct could not have interfered with the punishment imposed upon them. He has further submitted that in any event the workmen could not have been awarded back wages with continuity in service which should necessarily amount to paying premium over their misconduct. In support of his contentions, he has relied upon the judgments of Supreme Court in the matters of Gujarat Electricity Board and Another Versus Atmaram Sungomal Poshani [(1989) 2 Supreme Court Cases 602]; State of Uttar Pradesh Versus Atal Bihari Sastry, [(1993) Supplement (2) Supreme Court Cases 207] and of Rajasthan State Road Transport Corporation Versus Bhagyomal and Others, [(1994) Supplement (1) Supreme Court Cases 573].

5. In the matter of Gujarat Electricity Board & Another, (Supra), the court was considering the order of dismissal from service for not obeying the order of transfer. The court upheld order of termination of service and in paragraph 4 of the judgement observed that:

"The transfer of a government servant is an incident and a condition of service. Whenever a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the Competent Authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. He has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules."

6. In the matter of Atal Behari Shastri, (Supra), the court in paragraph 4 of the judgment held:

"Besides no arrears of salary of first respondent could have been granted in the absence of a finding recorded by the Court that the first respondent was not otherwise gainfully employed during the relevant period. Moreover, the first respondent is not free from blame, for the termination of his services was due to his admitted non-response to the notice of the Advisory Board asking him to return and resume the duties of his office."

7. In the matter of Rajasthan State Transport Corporation, (Supra), the court observed:

"When the High Court had found that the respondent-employee deserved punishment on account of his misconduct, the High Court could not have rewarded the employee by granting him the back wages, particularly when the Tribunal had converted the order of dismissal into that of the stoppage of two increments with cumulative effect."

8. The learned Advocate Mr. Soni, has appeared for the workmen and has supported the impugned judgment and award of the Labour Court. He has submitted that both the workmen were subjected to frequent transfers during their entire service which were complied with by them. In the instant case, the workmen could not comply with the orders of transfer on account of the personal inconvenience experienced by them and for merely not obeying one order of transfer the workmen could not have been visited with the punishment of dismissal from service. He has also submitted that since orders of termination of service have been held to be bad and the workmen have been ordered to be reinstated in service, the workmen are entitled to back wages and continuity in service as a matter of course.

9. I am afraid, I cannot accept the contention raised by Mr. Soni. After holding disciplinary proceedings both the workmen have been found guilty of not obeying the order of transfer and for tampering with the muster roll, i.e. the official record. The findings recorded by the Inquiry Officer have been upheld by the Labour Court. Even after the completion of the disciplinary proceedings both the workmen were given opportunity to comply with the orders of transfer.

However, neither of them availed of the said opportunity. Even the grounds mentioned by the concerned workmen have been found not to be genuine or justiciable. I am of the opinion that not obeying the order of transfer is certainly a misconduct which should invite punishment under the relevant rules. However, misconduct of tampering with the official record or falsifying the official record is far graver a misconduct. The Labour Court while passing award in favour of the workmen has not taken into consideration the misconduct of tampering with/falsifying the official records which has been proved against the workmen. Further, the workmen were obstinate enough not to avail of further opportunity given to them under the notice dated 20.9.83. I am, therefore, of the view that the Labour Court was not justified in holding that the punishment imposed upon the workmen was not commensurate with the guilt established against them. The Labour Court having upheld the findings recorded by the Inquiry Officer ought not to have interefered with the punishment imposed upon the workmen. Further, in view of the judgments referred to herein above, the grant of back wages and continuity of service to the erring workmen is also not justiciable. The workmen could not have been rewarded by awarding back wages and continuity of service as has been done in the present case. In the circumstances, the impugned judgment and award of the Labour Court requires to be quashed and set aside. However, it cannot be ignored that in view of the refusal of interim relief by this court and confirmed by Supreme Court both the workmen have been reinstated in service in due compliance with the order made by the Labour Court. Mr.Joshi fairly concedes that nothing adverse has been recorded against these workmen during their service tenure from the date of reinstatement till date. In that view of the matter, I do not intend to interfere with the order of reinstatement made by the Labour Court. Since the Labour Court has considered withholding of two increments with furture effect to be the adequate punishment, I need not interfere with the same also.

10. The petition is therefore partly allowed. The the award of the Labour Court (Annexure F to the petition) in so far as it awards full back wages to the workmen with continuity in service is quashed and set aside. The order of reinstatement of the workmen in service and imposition of punishment of withholding of 2 increments with future effect is confirmed. The workmen shall refund the amount of back wages recieved by them under the interim orders of the Supreme Court within a period of six months from today. The workmen may

approach the society for grant of suitable instalments, if so desired. The period from the date of termination of service of the workmen till the date of reinstatement shall be treated as period spent on extra-ordinary leave without pay. Rule is made absolute accordingly. The respondents shall bear the costs of this petition.

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